

TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

Sec. 44301. Definitions

In this chapter –

- (1) "American aircraft" means –
 - (A) a civil aircraft of the United States; and
 - (B) an aircraft owned or chartered by, or made available to –
 - (i) the United States Government; or
 - (ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.
- (2) "insurance carrier" means a person authorized to do aviation insurance business in a State, including a mutual or stock insurance company and a reciprocal insurance association.

Sec. 44302. General authority

(a) Insurance and Reinsurance. –

(1) Subject to subsection (c) of this section and section 44305(a) of this title, the Secretary of Transportation may provide insurance and reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft

(2) An aircraft may be insured or reinsured for not more than its reasonable value as determined by the Secretary in accordance with reasonable business practices in the commercial aviation insurance industry. Insurance or reinsurance may be provided only when the Secretary decides that the insurance cannot be obtained on reasonable terms from an insurance carrier.

(b) Reimbursement of Insurance Cost Increases –

(1) In General - The Secretary may reimburse an air carrier for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002, against loss or damage arising out of any risk from the operation of an American aircraft over the insurance premium that was in effect for a comparable operation during the period beginning September 4, 2001, and ending September 10, 2001, as the Secretary may determine. Such reimbursement is subject to subsections (a)(2), (c), and (d) of this section and to section 44303.

(2) Payment from Revolving Fund - A reimbursement under this subsection shall be paid from the revolving fund established by section 44307.

(3) Further Conditions - The Secretary may impose such further conditions on insurance, for which the increase in premium is subject to reimbursement under this subsection, as the Secretary may deem appropriate in the interest of air commerce.

(4) Termination of Authority - The authority to reimburse air carriers under this subsection shall expire 180 days after the date of enactment of this paragraph.

NOTE: This is an UNOFFICIAL merge of 49 USC Chapter 443 with the 'Air Transportation Safety and System Stabilization Act' enacted September 23rd, 2001

TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

(c) Presidential Approval. - The Secretary may provide insurance or reinsurance under subsection (a) of this section or reimburse an air carrier under subsection (b) of this section only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government.

(d) Consultation. - The President may require the Secretary to consult with interested departments, agencies, and instrumentalities of the Government before providing insurance or reinsurance or reimbursing an air carrier under this chapter.

(e) Additional Insurance. - With the approval of the Secretary, a person having an insurable interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the Secretary. However, the Secretary may not benefit from the additional insurance. This subsection does not prevent the Secretary from making contracts of coinsurance.

Sec. 44303. Coverage

The Secretary of Transportation may provide insurance and reinsurance, or reimburse insurance costs, as authorized under section 44302 of this title for the following:

(1) an American aircraft or foreign-flag aircraft engaged in aircraft operations the President decides are necessary in the interest of air commerce or national security to carry out the foreign policy of the United States Government.

(2) property transported or to be transported on aircraft referred to in clause (1) of this section, including –

(A) shipments by express or registered mail;

(B) property owned by citizens or residents of the United States;

(C) property –

(i) imported to, or exported from, the United States; and

(ii) bought or sold by a citizen or resident of the United States under a contract putting the risk of loss or obligation to provide insurance against risk of loss on the citizen or resident; and

(D) property transported between –

(i) a place in a State or the District of Columbia and a place in a territory or possession of the United States;

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TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

- (ii) a place in a territory or possession of the United States and a place in another territory or possession of the United States; or
- (iii) 2 places in the same territory or possession of the United States.
- (3) the personal effects and baggage of officers and members of the crew of an aircraft referred to in clause (1) of this section and of other individuals employed or transported on that aircraft.
- (4) officers and members of the crew of an aircraft referred to in clause (1) of this section and other individuals employed or transported on that aircraft against loss of life, injury, or detention.
- (5) statutory or contractual obligations or other liabilities, customarily covered by insurance, of an aircraft referred to in clause (1) of this section or of the owner or operator of that aircraft.

Sec. 44304. Reinsurance

To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may reinsure any part of the insurance provided by an insurance carrier. The Secretary may reinsure with, transfer to, or transfer back to, the carrier any insurance or reinsurance provided by the Secretary under this chapter.

Sec. 44305. Insuring United States Government property

(a) General. - With the approval of the President, a department, agency, or instrumentality of the United States Government may obtain –

(1) insurance under this chapter, including insurance for risks from operating an aircraft in intrastate or interstate air commerce, but not including insurance on valuables subject to sections 1 and 2 of the Government Losses in Shipment Act (40 U.S.C. 721, 722); and

(2) insurance for risks arising from providing goods or services directly related to and necessary for operating an aircraft covered by insurance obtained under clause (1) of this subsection if the aircraft is operated –

(A) in carrying out a contract of the department, agency, or instrumentality; or

(B) to transport military forces or materiel on behalf of the United States under an agreement between the Government and the government of a foreign country.

(b) Premium Waivers and Indemnification. - With the approval required under subsection (a) of this section, the Secretary of Transportation may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the

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TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

Secretary of Transportation under this section. If such an agreement is countersigned by the President or the President's designee, the agreement shall constitute, for purposes of section 44302(c), a determination that continuation of the aircraft operations to which the agreement applies is necessary to carry out the foreign policy of the United States.

Sec. 44306. Premiums and limitations on coverage and claims

(a) **Premiums Based on Risk.** - To the extent practical, the premium charged for insurance or reinsurance under this chapter shall be based on consideration of the risk involved.

(b) **Allowances In Setting Premium Rates For Reinsurance** - In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practices, except for payments by the air carrier for the stimulation or solicitation of insurance business.

(c) **Time Limits.** - The Secretary of Transportation may provide insurance and reinsurance under this chapter for a period of not more than 60 days. The period may be extended for additional periods of not more than 60 days each only if the President decides, before each additional period, that the continued operation of the aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(d) **Maximum Insured Amount.** - The insurance policy on an aircraft insured or reinsured under this chapter shall specify a stated amount that is not more than the value of the aircraft, as determined by the Secretary in accordance with reasonable business practices in the commercial aviation insurance industry. A claim under the policy may not be paid for more than that stated amount.

Sec. 44307. Revolving fund

(a) **Existence, Disbursements, Appropriations, and Deposits.** -

(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

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TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

(b) Investment. - On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

(c) Excess Amounts. - The balance in the revolving fund in excess of an amount the Secretary of Transportation determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

(d) Expenses. - The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied.

Sec. 44308. Administrative

(a) Commercial Practices. - The Secretary of Transportation may carry out this chapter consistent with commercial practices of the aviation insurance business.

(b) Issuance of Policies and Disposition of Claims. -

(1) The Secretary may issue insurance policies to carry out this chapter. The Secretary may prescribe the forms, amounts insured under the policies, and premiums charged. Any such policy may authorize the binding arbitration of claims made thereunder in such manner as may be agreed to by the Secretary and any commercial insurer that may be responsible for any part of a loss to which such policy relates. The Secretary may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

(2) For a claim under insurance authorized by this chapter, the Secretary may -

- (A) settle and pay the claim made for or against the United States Government;
- (B) pay the amount of a binding arbitration award made under paragraph (1); and
- (C) pay the amount of a judgment entered against the Government.

(c) Underwriting Agent. -

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TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

(1) The Secretary may, and when practical shall, employ an insurance carrier or group of insurance carriers to act as an underwriting agent. The Secretary may use the agent to adjust claims under this chapter, but claims may be paid only when approved by the Secretary.

(2) The Secretary may pay reasonable compensation to an underwriting agent for servicing insurance the agent writes for the Secretary. Compensation may include payment for reasonable expenses incurred by the agent but may not include a payment by the agent for stimulation or solicitation of insurance business.

(3) Except as provided by this subsection, the Secretary may not pay an insurance broker or other person acting in a similar capacity any consideration for arranging insurance when the Secretary directly insures any part of the risk.

(d) Budget. - The Secretary shall submit annually a budget program for carrying out this chapter as provided for wholly owned Government corporations under chapter 91 of title 31.

(e) Accounts. - The Secretary shall maintain a set of accounts for audit under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.

Sec. 44309. Civil actions

(a) Losses. -

(1) Actions against United States. - A person may bring a civil action in a district court of the United States or in the United States Court of Federal Claims against the United States Government when -

(A) a loss insured under this chapter is in dispute; or

(B) (i) the person is subrogated under a contract between the person and a party insured under this chapter (other than section 44305(b)) to the rights of the insured party against the United States Government; and

(ii) the person has paid to the insured party, with the approval of the Secretary of Transportation, an amount for a physical damage loss that the Secretary has determined is a loss covered by insurance issued under this chapter (other than section 44305(b)).

(2) Limitation. - A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter.

(3) Procedure. - To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28, United States Code, applies to an action under this subsection.

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TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY

CHAPTER 443 - INSURANCE

(b) Venue and Joinder. –

(1) A civil action under subsection (a) of this section may be brought in the judicial district for the District of Columbia or in the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the judicial district for the District of Columbia or in the judicial district in which the Attorney General agrees to accept service.

(2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

(c) Time Requirements. - When an insurance claim is made under this chapter, the period during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section is suspended until 60 days after the Secretary of Transportation denies the claim. The claim is deemed to be administratively denied if the Secretary does not act on the claim not later than 6 months after filing, unless the Secretary makes a different agreement with the claimant when there is good cause for an agreement.

(d) Interpleader. –

(1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader in a district court of the United States against the persons that may be entitled to payment. The action may be brought in the judicial district for the District of Columbia or in the judicial district in which any party resides.

(2) The district court may order a party not residing or found in the judicial district in which the action is brought to appear in a civil action under this subsection. The order shall be served in a reasonable manner decided by the district court. If the court decides an unknown person might assert a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

Sec. 44310. Ending effective date

-STATUTE-

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after December 3, 2003.

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